

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

----- X
LUCILLE GRECO,

Plaintiff,

-against-

**THE CITY OF NEW YORK, POLICE OFFICER
WILLIAMS Individually and in her official capacity as
a New York City Police Officer, POLICE OFFICER
SOMERVILLE, Individually and in his official capacity
as a New York City Police Officer, and SERGEANT
FERRANTE, Individually and in his official capacity as
a New York City Police Officer,**

Defendants.
----- X

**ANSWER OF DEFENDANT
CITY OF NEW YORK**

08 Civ. 1821 (NRB)

JURY TRIAL DEMANDED

Defendant City of New York (“City”), by its attorney Michael A. Cardozo, Corporation Counsel of the City of New York, for its answer to the complaint, respectfully alleges, upon information and belief, as follows.¹

1. Denies the allegations set forth in paragraph “1” of the complaint.
2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “2” of the complaint.
3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “3” of the complaint.
4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “4” of the complaint.

¹ Upon information and belief, the individuals identified in the Caption of the complaint as Police Officer Williams, Police Officer Somerville and Sergeant Ferrante have not yet been served in this matter.

5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “5” of the complaint.

6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “6” of the complaint.

7. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “7” of the complaint.

8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “8” of the complaint.

9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “9” of the complaint.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “10” of the complaint.

11. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “11” of the complaint.

12. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “12” of the complaint.

13. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “13” of the complaint.

14. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “14” of the complaint.

15. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “15” of the complaint.

16. Denies the allegations set forth in paragraph “16” of the complaint, except admits that plaintiff purports to proceed as stated therein, and further admits that plaintiff purports to invoke the jurisdiction of the Court as stated therein.

17. Denies the allegations set forth in paragraph “17” of the complaint, except admits that plaintiff purports to proceed as stated therein, and further admits that plaintiff purports to seek relief as stated therein.

18. Denies the allegations set forth in paragraph “18” of the complaint, except admits that plaintiff purports to invoke the jurisdiction of the Court as stated therein.

19. States that the allegations set forth in paragraph “19” of the complaint do not contain averments of fact to which a response is required.

20. Denies the allegations set forth in paragraph “20” of the complaint, except admits that plaintiff purports to base venue as stated therein.

21. Denies the allegations set forth in paragraph “21” of the complaint, except admits that a document purported to be a Notice of Claim was received by the City of New York on June 27, 2007.

22. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “22” of the complaint, except admits that thirty days has elapsed since the City of New York received, on June 27, 2007, a document purported to be a Notice of Claim.

23. Denies the allegations set forth in paragraph “23” of the complaint, except admits that a hearing pursuant to New York General Municipal Law § 50-h was held on July 27, 2007.

24. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “24” of the complaint.

25. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “25” of the complaint.

26. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “26” of the complaint.

27. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “27” of the complaint.

28. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “28” of the complaint.

29. Denies the allegations set forth in paragraph “29” of the complaint, except admits that the City of New York is a municipal corporation, and further respectfully refers the Court to the New York City Charter and Administrative Code for a recitation of the relationship between defendant City of New York and the New York City Police Department.

30. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “30” of the complaint.

31. States that the allegations set forth in paragraph “31” of the complaint set forth conclusions of law to which no response is required.

32. Denies the allegations set forth in paragraph “32” of the complaint.

33. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “33” of the complaint.

34. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “34” of the complaint.

35. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “35” of the complaint.

36. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “36” of the complaint.

37. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “37” of the complaint.

38. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “38” of the complaint.

39. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “39” of the complaint.

40. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “40” of the complaint.

41. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “41” of the complaint.

42. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “42” of the complaint.

43. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “43” of the complaint.

44. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “44” of the complaint.

45. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “45” of the complaint.

46. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “46” of the complaint.

47. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “47” of the complaint.

48. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “48” of the complaint.

49. Denies the allegations set forth in paragraph “49” of the complaint.

50. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “50” of the complaint.

51. Denies the allegations set forth in paragraph “51” of the complaint, except deny knowledge or information sufficient to form a belief as to the truth of the allegations concerning plaintiff’s alleged injuries.

52. Denies the allegations set forth in paragraph “52” of the complaint, except deny knowledge or information sufficient to form a belief as to the truth of the allegations concerning plaintiff’s alleged injuries.

53. Denies the allegations set forth in paragraph “53” of the complaint, except deny knowledge or information sufficient to form a belief as to the truth of the allegations concerning plaintiff’s alleged injuries.

54. Denies the allegations set forth in paragraph “54” of the complaint.

55. Denies the allegations set forth in paragraph “55” of the complaint.

56. Denies the allegations set forth in paragraph “56” of the complaint.

57. Denies the allegations set forth in paragraph “57” of the complaint.

58. Denies the allegations set forth in paragraph “58” of the complaint.

59. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “59” of the complaint.

60. In response to the allegations set forth in paragraph “60” of the complaint, defendant City repeats and realleges the responses set forth in preceding paragraphs of this answer as if fully set forth herein.

61. Denies the allegations set forth in paragraph “61” of the complaint.

62. Denies the allegations set forth in paragraph “62” of the complaint.

63. In response to the allegations set forth in paragraph “63” of the complaint, defendant City repeats and realleges the responses set forth in preceding paragraphs of this answer as if fully set forth herein.

64. Denies the allegations set forth in paragraph “64” of the complaint.

65. Denies the allegations set forth in paragraph “65” of the complaint.

66. In response to the allegations set forth in paragraph “66” of the complaint, defendant City repeats and realleges the responses set forth in preceding paragraphs of this answer as if fully set forth herein.

67. Denies the allegations set forth in paragraph “67” of the complaint.

68. Denies the allegations set forth in paragraph “68” of the complaint.

69. In response to the allegations set forth in paragraph “69” of the complaint, defendant City repeats and realleges the responses set forth in preceding paragraphs of this answer as if fully set forth herein.

70. Denies the allegations set forth in paragraph “70” of the complaint.

71. Denies the allegations set forth in paragraph “71” of the complaint.

72. Denies the allegations set forth in paragraph “72” of the complaint.

73. Denies the allegations set forth in paragraph “73” of the complaint.

74. Denies the allegations set forth in paragraph “74” of the complaint.

75. Denies the allegations set forth in paragraph “75” of the complaint.

76. Denies the allegations set forth in paragraph “76” of the complaint.

77. Denies the allegations set forth in paragraph “77” of the complaint.

78. Denies the allegations set forth in paragraph “78” of the complaint.

79. Denies the allegations set forth in paragraph “79” of the complaint.

80. Denies the allegations set forth in paragraph “80” of the complaint.

81. In response to the allegations set forth in paragraph “81” of the complaint, defendant City repeats and realleges the responses set forth in preceding paragraphs of this answer as if fully set forth herein.

82. Denies the allegations set forth in paragraph “82” of the complaint.

83. Denies the allegations set forth in paragraph “83” of the complaint.

84. In response to the allegations set forth in paragraph “84” of the complaint, defendant City repeats and realleges the responses set forth in preceding paragraphs of this answer as if fully set forth herein.

85. Denies the allegations set forth in paragraph “85” of the complaint.

86. Denies the allegations set forth in paragraph “86” of the complaint.

87. In response to the allegations set forth in paragraph “87” of the complaint, defendant City repeats and realleges the responses set forth in preceding paragraphs of this answer as if fully set forth herein.

88. Denies the allegations set forth in paragraph “88” of the complaint.

89. Denies the allegations set forth in paragraph “89” of the complaint.

90. In response to the allegations set forth in paragraph “90” of the complaint, defendant City repeats and realleges the responses set forth in preceding paragraphs of this answer as if fully set forth herein.

91. Denies the allegations set forth in paragraph “91” of the complaint.

92. Denies the allegations set forth in paragraph “92” of the complaint.

93. In response to the allegations set forth in paragraph “93” of the complaint, defendant City repeats and realleges the responses set forth in preceding paragraphs of this answer as if fully set forth herein.

94. Denies the allegations set forth in paragraph “94” of the complaint.

95. Denies the allegations set forth in paragraph “95” of the complaint.

96. In response to the allegations set forth in paragraph “96” of the complaint, defendant City repeats and realleges the responses set forth in preceding paragraphs of this answer as if fully set forth herein.

97. Denies the allegations set forth in paragraph “97” of the complaint.

98. Denies the allegations set forth in paragraph “98” of the complaint.

99. Denies the allegations set forth in paragraph “99” of the complaint.

100. Denies the allegations set forth in paragraph “100” of the complaint.

101. Denies the allegations set forth in paragraph “101” of the complaint.

102. In response to the allegations set forth in paragraph “102” of the complaint, defendant City repeats and realleges the responses set forth in preceding paragraphs of this answer as if fully set forth herein.

103. Denies the allegations set forth in paragraph “103” of the complaint.

104. Denies the allegations set forth in paragraph “104” of the complaint.

105. Denies the allegations set forth in paragraph “105” of the complaint.

106. Denies the allegations set forth in paragraph “106” of the complaint.

107. In response to the allegations set forth in paragraph “107” of the complaint, defendant City repeats and realleges the responses set forth in preceding paragraphs of this answer as if fully set forth herein.

108. Denies the allegations set forth in paragraph “108” of the complaint.

109. Denies the allegations set forth in paragraph “109” of the complaint.

110. In response to the allegations set forth in paragraph “110” of the complaint, defendant City repeats and realleges the responses set forth in preceding paragraphs of this answer as if fully set forth herein.

111. Denies the allegations set forth in paragraph “111” of the complaint.

112. Denies the allegations set forth in paragraph “112” of the complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE:

113. The complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE:

114. Defendant City has not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE:

115. At all times relevant to the acts alleged in the complaint, the duties and functions of the municipal defendant’s officials entailed the reasonable exercise of proper and lawful discretion. Therefore, defendant City has governmental immunity from liability.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:

116. Any injury alleged to have been sustained resulted from plaintiff's own culpable or negligent conduct or the culpable or negligent conduct of others and was not the proximate result of any act of defendant City.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE:

117. There was probable cause for plaintiff's arrest and prosecution.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE:

118. Plaintiff provoked any incident.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE:

119. Plaintiff has failed to comply with New York General Municipal Law §§ 50-e and 50-i.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE:

120. Plaintiff's claims are barred, in part, by the applicable statute of limitations.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE:

121. Punitive damages cannot be assessed against the City of New York.

WHEREFORE, defendant City requests judgment dismissing the complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
May 16, 2008

MICHAEL A. CARDOZO
Corporation Counsel of the
City of New York
Attorney for Defendant City
100 Church Street
New York, New York 10007
(212) 788-0906

By: /s/
Shawn D. Fabian (SF4606)
Assistant Corporation Counsel
Special Federal Litigation Division

To: Rene Myatt, Esq. (By ECF and First Class Mail)
Attorney for Plaintiff
204-04 Hillside Avenue, 2nd Floor
Hollis, New York 11423

DECLARATION OF SERVICE

Shawn D. Fabian declares, under penalty of perjury and pursuant to 28 U.S.C. § 1746, that the following is true and correct: On May 16, 2008, I served the annexed “**ANSWER OF DEFENDANT CITY OF NEW YORK,**” upon Rene Myatt, Esq., attorney for plaintiff, by depositing a copy of same, enclosed in a first class, postpaid properly addressed wrapper in a post office/official depository under the exclusive care and custody of the United States Postal Service, within the State of New York, directed to plaintiff:

Rene Myatt, Esq.
204-04 Hillside Avenue, 2nd Floor
Hollis, New York 11423

being the address designated by plaintiff for that purpose.

Dated: New York, New York
May 16, 2008

/s/

SHAWN D. FABIAN
ASSISTANT CORPORATION COUNSEL